

Policies and Procedures Regarding Enforcement

September 11, 2018

The following Policies and Procedures Regarding Enforcement were adopted by the Board of Directors of Pitchfork Association, Inc. (the “Board” and the “Association”) as specifically authorized in Paragraphs 2.38, 3.5A, and 3.13 of the Amended and Restated Declaration of Protective Covenants for Pitchfork as recorded in the real property records of Gunnison County, Colorado at Reception No. 523046 (the “Declaration”) and may be added to, amended, or repealed at any time by the Board.

They are designed to help accomplish three purposes: (1) to protect the integrity and condition of the entire common interest community and thereby protect each owner’s investment; (2) to provide a safe and pleasant living environment for all owners and lessees; and (3) to provide for an enforcement policy that complies with the governing documents and Colorado law.

To the extent any provision herein conflicts with a provision in previous Rules, the provisions herein shall control. Any provision herein that relates to a provision within the Declaration is meant to supplement and clarify such provision. To the extent any provision herein conflicts with the Declaration, the provisions of the Declaration shall control.

1. **Enforcement of Governing Documents.** Any complaint which alleges a violation of the Declaration or the Governing Documents against a unit owner shall be made in writing by the complainant and will contain substantially the same information as set forth in the Witness Statement attached hereto as **Exhibit A**. At a minimum, the complaint must set forth:

(a) The name and phone number of the complainant and, if the complainant is a unit owner, the unit number.

(b) The name and unit number of the alleged violator.

(c) The specific details or description of the alleged violation, including the date, time and location where the alleged violation occurred.

(d) A statement by the complainant that he or she will cooperate in the enforcement procedures and will provide testimony at any proceedings, hearings or trial which may be necessary.

(e) The signature of the complainant and the date on which the complaint is made.

2. **Notice of First Violation.** The unit owner alleged to have caused or committed the violation must be notified of the complaint and alleged violation by the Association or by its manager. Such notice must be a written demand to cease and desist

from the alleged violation and shall specify: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any additional similar violation may result in the imposition of a sanction after notice and an opportunity for hearing, if the violation is not continuing. If the complaint is based on conduct of the unit owner's occupant or invitee, the unit owner must notify such person of the alleged violation. The notification must be in a manner prescribed by the Board of Directors in a form similar to that which is attached hereto as **Exhibit B** ("Notice of Violation").

3. **Notice of Subsequent Violation.** At any time within twelve months of such notice pursuant to Paragraph 2, if the violation continues past the period allowed in the demand for abatement without sanction or penalty or if the same or a substantially similar violation subsequently occurs, the Board, or its delegate, shall serve the violator with written notice of a hearing to be held by the Board. Such notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which time shall not be less than fifteen days after the giving of the notice; (iii) an invitation to attend the hearing and produce any statement, evidence, and witness on his or her behalf; and (iv) the proposed sanction to be imposed. The notification must be in a manner prescribed by the Board of Directors in a form similar to that which is attached hereto as **Exhibit B** ("Notice of Violation").

4. **Hearing.** The Hearing shall be held pursuant to such notice affording the unit owner a reasonable opportunity to be heard. Prior to the effectiveness of any such sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. If the notice requirements have been met, and the alleged violator does not appear at the meeting, the alleged violator will be deemed to have waived his or her opportunity for a hearing. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board shall be final. However, in no event shall the Board suspend a right to use the Common Elements or voting rights for an infraction of the Association's rules and/or regulations for a period in excess of sixty days, unless such infraction is a continuing infraction, in which case suspension may continue for so long as such infraction continues and for up to sixty days thereafter. Notwithstanding any of the foregoing provisions, these procedures shall not be necessary in order to impose any sanction or penalty for nonpayment of assessments.

5. **Hearing Committee.** Any unit owner charged with an alleged violation of the Governing Documents is entitled to an opportunity for a hearing before an impartial decision maker. For purposes of this policy, "**Impartial Decision Maker**" means a person or group of persons who have the authority to make a decision regarding the enforcement of the Association's covenants, conditions, and restrictions, including its architectural requirements, and the other Governing Documents and do not have any direct personal or financial interest in the outcome which may include, without limitation, the Board of Directors or a committee, at the discretion of the Board of Directors. A decision maker shall not be deemed to have a

direct personal or financial interest in the outcome if the decision maker will not, as a result of the outcome, receive any greater benefit or detriment than will the general membership of the Association. The President of the Board shall appoint the Impartial Decision Maker, which shall be three natural persons who need not be Members of the Association. In so appointing, the President should make a good faith effort to avoid appointing next door neighbors of the respondent or any Members who are essential witnesses to the alleged violation giving rise to the complaint. The decision of the President shall be final, except that a respondent may challenge any Impartial Decision Maker for cause, where a fair and impartial hearing cannot be afforded, at any time at least five days prior to the taking of evidence at the hearing. In the event of such a challenge, the Board shall determine the sufficiency of the challenge, without the President voting. If such a challenge is sustained, the President shall appoint another natural person to replace the challenged natural person. All decisions of the Board in this regard shall be final. The Impartial Decision Maker shall elect a chairman and appoint a hearing officer (who may be the same person as the chairman) who shall take evidence and ensure that a proper record of all proceedings is maintained. At any such hearing, the Impartial Decision Maker will hear and consider arguments, evidence or statements regarding the alleged violation. Following a hearing, the Impartial Decision Maker will issue its written determination regarding the alleged violation. The decision of the Impartial Decision Maker will be final and binding on the unit owner and Association. The unit owner shall have the right to appeal a decision made by the Impartial Decision Maker to the Board of Directors if the Impartial Decision Maker is other than the Board of Directors as set forth in the Bylaws. Notification of the Board's determination shall be made in a form similar to that which is attached as **Exhibit C**.

6. **Remedies of Association**. The Association, acting through the Board of Directors, may enforce all applicable provisions of and may impose sanctions for violation of the Governing Documents not otherwise inconsistent with the Governing Documents and Colorado law. Such sanctions may include, without limitation:

(a) imposing reasonable monetary penalties after notice and an opportunity to be heard has been given to the unit owner or other violator. A unit owner shall be responsible for payment of any penalty levied or imposed against any person who is an invitee, owner or tenant of the unit;

(b) suspending a unit owner's right to vote;

(c) suspending any person's right to use any facilities within the common elements; provided, however, nothing in this Policy authorizes the Board of Directors to limit ingress or egress to or from a unit;

(d) exercising self-help of taking action to abate any violation of the Governing Documents in an emergency situation;

(e) requiring a unit owner, at the unit owner's expense, to remove any structure or improvement on such unit in violation of the Governing Documents and to restore the unit to its previous condition and, upon failure of the unit owner to do so, the Board of Directors or its designee has the right to enter the property, remove the violation and restore

the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(f) without liability to any person, prohibiting any contractor, subcontractor, agent, employee or other invitee who fails to comply with the terms and provisions of the Governing Documents from continuing or performing any further activities at the unit;

(g) towing vehicles which are parked in violation of the Governing Documents;

(h) filing a suit at law or in equity to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover monetary penalties or money damages or to obtain such other relief as to which the Association may be entitled, including, without limitation recovery of all attorney fees and other out of pocket costs and expenses, with interest thereon, as permitted by the Act; and

(i) Recording a written notice of a violation by any unit owner of any restriction or provision of the Governing Documents. The notice must be executed and acknowledged by an officer of the Association and contain substantially the following information: (i) the name of the unit owner; (ii) the legal description of the unit against which the notice is being recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being recorded by the Association pursuant to this Policy; and (v) a statement of the specific steps which must be taken by the unit owner to cure the violation. Recordation of a "Notice of Violation" serves as a notice to the unit owner and to any subsequent purchaser of the unit that there is a violation of the provisions of the Governing Documents.

7. **Monetary Penalties.** If a unit owner is found to have violated personally or is otherwise liable for a violation, the following with respect to the levying of penalties shall occur:

(a) If found to be guilty of a second or continuing violation, the Owner will be notified of the finding by the Association or its manager. The Owner will be assessed a penalty.

(b) Where a penalty is imposed, it will be in the amount of twenty-five dollars (\$25.00) for a single incident of violation of a Governing Document, fifty dollars (\$50.00) for a second single incident of the same violation, and one hundred dollars (\$100.00) for a third or subsequent single incident of the same violation; or in any case, the sum of twenty-five dollars (\$25.00) per day for a violation of a continuing nature. A PENALTY FOR A VIOLATION OF A CONTINUING NATURE WILL CONTINUE UNTIL THE VIOLATION HAS BEEN ELIMINATED AND THE ASSOCIATION HAS CONFIRMED THE VIOLATION HAS BEEN CURED. UNIT OWNER MUST PROVIDE THE ASSOCIATION OF NOTICE IF THE VIOLATION HAS BEEN CURED.

(c) If found to be guilty of any violation, including a first violation, the notice of determination may also require the unit owner to pay for any damage or any

unauthorized condition on the property for which the unit owner has been found responsible, to pay the costs of any repairs which have previously been made or will be made by the Association, or to pay any legal expenses and costs incurred by the Association as a result of the violation. The cost of such inspection and any necessary repairs shall be assessed to the unit.

(d) All amounts required to be paid by a unit owner under this Policy will bear interest at the higher of the amount permitted by law or by 18% per annum until paid.

(e) Notwithstanding the foregoing, nothing in this Policy will be deemed to limit the Association's rights and remedies set forth in any of the other Governing Documents.

8. **Charges**. Any unit owner assessed under this Policy must pay any charges imposed within thirty (30) days of notification that such charges are due. Failure to make the payment on time shall subject the unit owner to all of the legal or equitable remedies necessary for the collection thereof, including, without limitation, the Association's right to assert a lien as an Assessment against the unit in accordance with the Act. All charges imposed in accordance with this Policy will be added to the unit owner's account and are collectible as an Assessment in the same manner as any regular or special assessment against the unit.

9. **Time of the Essence/Notices**. Time is of the essence of this policy. Notices are deemed delivered either:

- (a) At the time of delivery if by personal delivery;
- (b) At the time of sending if by electronic mail; or
- (c) On the second business day after deposit in the United States Mail.

10. **Right of Action**. The Association on behalf of itself and any aggrieved unit owner is granted a right of action against any unit owner for failure to comply with the provisions of the

Governing Documents, or with decisions of the Board of Directors made pursuant to authority granted to the Association in the Governing Documents. In any action covered by this Section, the Association has the right to enforce Governing Documents by any proceeding at law or in equity, or as set forth in the Governing Documents, or by mediation or binding arbitration to the extent authorized by this Declaration or the Act. The prevailing party in any arbitration or judicial relief or other civil action shall be awarded from the non-prevailing party or parties, all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief, including interest as set forth in this Policy, on such amount until paid. Failure by the Association to enforce compliance with any provision of the Governing Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

11. **Failure to Complete Maintenance**. In addition to any other enforcement rights, if a unit owner fails to properly perform its maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association

against the unit and the unit owner as an Enforcement Assessment.

12. **Unit Owner Not Responsible.** If, as a result of the fact finding process described in this Policy, it is determined that the unit owner should not be held responsible for the alleged violation, the Association will not allocate to the unit owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or hearing the claim. If it is determined that the allegations were arbitrary or capricious, the complainant will be responsible for the Association's costs or attorney fees incurred related to the claim.

13. **Cumulative Remedies.** All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party will be awarded all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action. The amount of any such attorneys' fees, court costs and interest constitute a lien against the unit owner's unit that may be foreclosed in accordance with applicable law.

The decision to pursue enforcement action in any particular case is at the Board of Directors' discretion. Such a decision shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

14. **Definitions.** Any initially capitalized terms herein that are not otherwise defined, have the meanings given to them in the Declaration.

15. **Deviations.** The Board of Directors may deviate from the procedures set forth in this Policy if in its sole discretion such deviation is reasonable under the circumstances.

16. **Inconsistencies.** If and to the extent that any provision of these Policies are inconsistent with the Declaration the applicable provisions of the Declaration prevail, unless otherwise required by the Act.

**EXHIBIT A
TO ENFORCEMENT POLICY FOR
PITCHFORK ASSOCIATION, INC.
VIOLATION COMPLAINT - WITNESS STATEMENT**

PLEASE PRINT OR TYPE. Complete all the information you know. If unknown, please state so.
Attach additional sheets if necessary.

INFORMATION CONCERNING WITNESS(ES) TO VIOLATION

Reporting Witness Name	Date
Unit #	Area Code - Phone number

ADDITIONAL WITNESSES

Name & Address	Area Code - Phone Number
Name & Address	Area Code - Phone Number

INFORMATION CONCERNING THE VIOLATOR

Violator's Name	Area Code - Phone Number
Unit #	

Owner's Name, Address & Phone No. if different than the Violator.

INFORMATION CONCERNING THE VIOLATION

Violation Date	Time	Location
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Section(s) of Declaration, Bylaws or Rules that was violated

Reporting Witness' Observations:

Were any photographs or sound recordings made? Yes _____ No _____ By whom?

_____ Include any audio or videotapes or photographs with this form or forward as soon as possible. Include the name of the person who made the tape or photograph(s), the date it was made, the location it was made and the name of anyone else who was present.

I HAVE MADE THE ABOVE STATEMENTS BASED ON MY PERSONAL KNOWLEDGE AND NOT UPON WHAT HAS BEEN TOLD TO ME. I WILL FULLY COOPERATE WITH THE ASSOCIATION AND ITS ATTORNEYS TO PROVIDE ADDITIONAL STATEMENTS OR AFFIDAVITS, AND IN THE EVENT A HEARING OR TRIAL IS NECESSARY, I WILL _____

WILL NOT _____ APPEAR TO TESTIFY AS A WITNESS.

Signature

**EXHIBIT B
TO ENFORCEMENT POLICY FOR
PITCHFORK ASSOCIATION, INC.**

TO: _____
(Owner/Tenant)

Date: _____

NOTICE OF VIOLATION OR SUBSEQUENT VIOLATION

Re: Violation of Declaration, Bylaws or Rules and Regulations

You are hereby notified, as the Owner/Tenant of the Unit # _____ at Pitchfork, Colorado that you violated the Association's Declaration, Bylaws or Rules and Regulations. The actions complained of occurred on or about _____, 20____ and are described as follows:

YOU MAY AVOID THE PROPOSED SANCTION BY CURING THE VIOLATION WITHIN 7 DAYS OF THE DATE OF THIS NOTICE.

THE HEARING, IF APPLICABLE, IS SCHEDULED FOR _____, at _____.

IF THERE SHALL BE SUCH A HEARING, YOU ARE INVITED TO ATTEND AND PRODUCE ANY STATEMENT, EVIDENCE, AND WITNESS ON YOUR BEHALF.

THE PROPOSED SANCTION TO BE IMPOSED IS _____
_____.

IF A VIOLATION EXISTS, WHICH HAS NOT ALREADY BEEN CORRECTED AND YOU FAIL TO MAKE AN APPROPRIATE CORRECTION, THE ASSOCIATION MAY CORRECT THE VIOLATION AT YOUR EXPENSE.

Please consult the Association's rules for further details.

Very truly yours,
Pitchfork Association, Inc.

By: _____
Title: _____

Address

City, State, Zip

Area Code and Phone #

EXHIBIT C
TO ENFORCEMENT POLICY FOR
PITCHFORK ASSOCIATION, INC.

TO: _____
(Owner/Tenant)

Date: _____

NOTICE OF DETERMINATION REGARDING VIOLATION

On _____ 20__ you were notified of a violation of the Declaration, Bylaws, or Rules of the Association. Pursuant to the Association rules:

- ☐ A hearing was held at your request regarding the alleged violation.
- ☐ You have admitted to the violation by default and waived your right to request a hearing. After considering the complaint and evidence, the following determination has been made and the following action(s) will be taken:
- ☐ You were found not guilty and no action will be taken.
- ☐ A 2nd, 3rd or subsequent violation (circle one) of the Association Declaration, Bylaws or Rules has occurred and a penalty in the amount of \$ _____ is now due.
- ☐ A violation of the Association's Declaration, Bylaws or Rules of a continuing nature has occurred and a penalty in the amount of \$ _____ per day from _____, 20__ is now due. A PENALTY FOR A CONTINUING VIOLATION WILL CONTINUE UNTIL THE VIOLATION HAS BEEN ELIMINATED AND THE ASSOCIATION HAS BEEN NOTIFIED.
- ☐ Damages & expenses in the amount of \$ _____ have accrued and are due.
- ☐ Legal expenses in the amount of \$ _____ have been incurred by the Association and are due.
- ☐ Damages have occurred or an architectural violation exists, as charged in the complaint. The Association will proceed to have the damages or violation corrected or repaired at your expense.
- ☐ As a result of a second or subsequent violation, we have instructed our attorneys to inform you that legal proceedings will be instituted if further violations occur, and the fees and expenses incurred will be assessed to you.

Pitchfork Association, Inc.

By: _____ Name: _____ Title: _____